THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No.25653 of 2006
Date: 15 -11-2007

Between:
M/s. Arun Enterprises,
APHB Colony, Yerramukkapalli, Kadapa,
rep. by its partner, P.Venugopal

Petitioner

And

State of Andhra Pradesh,
rep.by Secretary,
Industries and Commerce Department,
(Mines Department),
Secretariat, Hyderabad and others

Respondents

THE HONOURABLE SRI JUSTICE P.S. NARAYANA

W.P.No. 25653 of 2006

ORDER:

1. Heard Sri Y.N.Vivekananda, the learned counsel representing the writ petitioner, the learned Assistant Government Pleader for Industries and Smt.N.Shoba, the learned counsel representing the third respondent.

2. The counsel on record made submissions on the strength of the respective pleadings of the parties.

3. The learned counsel for the petitioner would contend that for the self same property again a lease cannot be entered into and on the contrary the learned Assistant Government Pleader for Industries and Smt.Shoba would contend otherwise that these respective properties covered by the subsisting lease of the petitioner and the proposed lease in favour of third respondent being totally different, the writ petition is devoid of merit.

4. The writ petition is filed for a writ of Mandamus to direct respondents 1 and 2 herein to refrain from executing any lease deed pursuant to the G.O.Ms.No.55 dated 3.3.2006 in favour of the third respondent herein ignoring the subsisting lease in favour of the petitioner herein, pursuant to G.O.Ms.No.366 Industries & Commerce (M.III) Department, dated 18.8.1984, pursuant to which a lease deed was executed on 23.4.1985 in

favour of the petitioner herein of over an extent of Ac.17.98cts in Survey No.874 in Thummalur Village, Pendlimarri Mandal, Kadapa District and pass such other orders.

5. This court issued Rule Nisi on 20-12-2006 and also granted an order of status-quo in WPMP. No.32891 of 2006.

6. The third respondent filed WVMP No.173 of 2007 and respondents 1 and 2 filed WVMP No.249 of 2007 to vacate the interim order. At the request of the counsel, the writ petition itself is being disposed of finally.

7. It is stated by the writ petitioner that the petitioner is a partner of the petitioner company and the petitioner company had been granted a valid mining lease by the first respondent over an extent of Ac.17-98 cts forming part of Survey No.874. situated at Thummalur village, Kadapa District for extracting white clay and yellow Ochre in Thummalur village, Pendimarri Mandal, Kadapa District. He submitted that Survey No.874 comprises of a total extent of Ac.1, 223. 68 cts. He further stated that the area leased out in his favour is at a distance of more than one kilometer from the western boundary of Survey No.874. He had been carrying on mining operation pursuant to the lease granted in favour of the petitioner by the first respondent in G.O.Ms.No.366 Industries & Commerce (M.III) Department, dated 18.8.1984, pursuant to which a lease deed was executed on 23.4.1985. He had been carrying on the mining operations, pursuant to the lease granted in favour of the petitioner.

8. Further, it is submitted that in terms of the Mineral Concession Rules, (in short 'MC Rules') especially, Rule 24-A, he had filed an application seeking first renewal of the mining lease granted in favour of the petitioner.

The said application is pending consideration before respondent Nos.1 and 2 herein. He further submitted that in terms of Rule 24-A, he is entitled to carry on the mining operation till the first respondent passes orders on the renewal application made by him as the lease granted in favour of the petitioner, is deemed to have been extended by a further period till the State Government passes orders of the renewal application under Rule 24-A (9).

9. While matter stood thus, the third respondent herein appears to have sought for the grant of mining lease in Survey No.874 over an extent of Ac.367.54cts. The petitioner submitted that the second respondent herein had while submitting proposals to the first respondent had deliberately manipulated the records with the active collusion and connivance of the third respondent herein in finding a plan duty disclosing that the area leased out in his favour is outside the proposal made for the grant of the mining lease in favour of the third respondent. He submitted that it has been deliberately done by the second respondent herein solely with a view to favour the third respondent in being granted the mining lease over the extent of Ac.367.54cts inclusive of the area already leased out in favour of the petitioner.

10. It is also stated that the second respondent herein had deliberately disclosed the area leased out in his favour, as being outside the proposals made for grant of mining lease in favour of the third respondent.

11. Further it is stated that it has been duly disclosed in the sketch as if the area leased out in favour of the petitioner is lying closure to the western boundary of Survey No.874. Even though, the area leased out in favour of the petitioner is approximately more than a kilometer from the western boundary. He submitted that the application made by the third respondent herein together with the plans filed by him for seeking grant of mining lease

have been deliberately manipulated and distorted to mislead respondent Nos.1 and 2 herein, solely with a view to cause wrongful loss to the petitioner. He submitted that he had made heavy investments while carrying on the mining operation leased out to him as early as in the year 1985. He had also paid all the dues payable for working mining lease granted in favour of the petitioner.

12. Having regard to the said discussion, the petitioner issued a notice as early as on 25.8.2006 bringing into the notice of respondents 1 and 2, the mischief sought to be purported by the second respondent for favouring the third respondent.

13. Further respondents 1 and 2 ignoring the legal notice issued by the petitioner without even replying to the same, are taking steps to execute the lease deed in favour of the third respondent granted to him in G.O.Ms.No.55 dated 3.3.2006 ignoring the leasehold interest of the petitioner and the subsisting rights of the petitioner in carrying on the mining operations.

14. Further it is stated that the petitioner had filed writ petition No.20732 of 2006 before this court for issuance of a Writ of Mandamus directing respondent Nos. 1 and 2 herein to refrain from executing any lease deed, pursuant to G.O.Ms.No.55 dated 3.3.2006 in favour of the third respondent ignoring the subsisting lease in his favour under G.O.Ms.No.366 dated 18.8.1984. The said writ petition was dismissed at the admission stage by this court on the ground that the said G.Os. viz., G.O.Ms.No.366 dated 18.8.1984 and G.O.Ms.No.55 dated 3.3.2006 were not placed before this court. Considering himself aggrieved by the said judgment, the petitioner had approached a Division Bench of this court by filing Writ Appeal No.1199 of

2006 and the said Writ Appeal was disposed of by the Division Bench granting liberty to withdraw W.P.No.20732 of 2006 and to approach this court afresh. Therefore, he filed the present writ petition in terms of the liberty granted by the Division Bench.

15. Further it is stated that the lease deed has not been executed in favour of the third respondent having regard to the dispute raised by him and further having regard to other disputes raised by other persons who have been similarly granted lease in the area disclosed as being available for being leased in favour of the third respondent. In such circumstances, the writ petitioner approached this court and obtained order of status-quo as referred to supra.

16. In the counter affidavit filed by the respondents 1 and 2, sworn to by the Assistant Director of Mines & Geology, Kadapa, it is stated that it is a fact that the petitioner company has been granted a Mining Lease vide G.O.Ms.No.366, Industries & Commerce Department, dated 18.08.1984 in Survey No.874/p of Thummalur (v), Pendlimarri (M), Kadapa District over an extent of Ac.17.98 cts for a period of 20 years for Yellow Ochre & White Clay. The lease deed has been executed on 23.04.85 and the lease was in force up to 22.4.2005. The petitioner carried out mining operations and produced 230 MTs of Yellow Ochre and 2020 MTs of White Clay. As per the information available in this office records, the lessee in not operating the mine from 1995 onwards. The Managing Partner of the petitioner company has expired on 5.11.2000. Subsequently they have formed another partnership deed with the following members: P.Raja Arun Kumar, P.Raja Amarnath, P.Venugopal and Smt.B.Vijayalakshmi. The said partnership deed was neither attested by Chartered Accountant nor registered with Registrar of

firms. The area granted and executed in favour of the petitioner company is falling on the western edge of S.No.874 of Thummalur (V), but not 1 Km. distance from the western boundary of the S.No.874 of Thummalur (V). During the lease period the petitioner has not carried the mining operations regularly as required under Rule 28(1) of M.C.Rules. Further the petitioner is a defaulter in payment of Mineral Revenue payable to the Government. He has not submitted monthly returns and annual returns regularly. He has submitted returns from March,2000 to April,2006 after the expiry of the lease period which is highly irregular. Therefore, the contention of the petitioner in stating that they have operating the mine regularly is not at all correct.

17. It is further stated that as per Rule, 24 of M.C.Rules, the application for renewal of mining lease has to be submitted 12 months before expiry of the lease period, but the petitioner has submitted the renewal application on 13.4.2005. The petitioner should have submitted their renewal application on or before 12.04.2004, but the petitioner submitted their renewal application nine days before the expiry of mining lease against the stipulated time limit.

18. Further it is stated that the petitioner paid the required application fee under Ch.No.62780, dated 21.3.2005 at Sub Treasury Office, Kadapa and submitted the same along with Renewal Application form, affidavits and the leased sketch. He has not submitted valid M.R.C.C. as required under M.C.Rules, have the contention of the petitioner stating that they have filed their renewal application within the stipulated period as specified under Rule 24-A of M.C.Rules is false and incorrect. The petitioner is not entitled to carry out any mining operations after the expiry of lease period i.e. from 23.4.2005. The petitioner is liable to be punished for submitting false information to this

court.

19. In reply to Paras 4 to 7 of the affidavit filed in support of the writ petition, it is submitted that the third respondent has been granted a mining lease in Survey No.874/P of Thummalur (V) , Pendilimarri (M), Kadapa District over an extent of Ac.367.54cts vide G.O.Ms.No.55 of Industries & Commerce Department, dated 3.3.2006. The lease deed has not been executed due to non-submission of certificates issued by Pollution Department & Ministry of Environmental & Forest. Further, it is submitted that it is a fact, that the 2nd respondent forwarded one set of application along with sketch to the Mandal Revenue Officer, Pendlimarri (M), for their report. In reply, Mandal Revenue Offier, Pendlimari showed the area in the sketch required by the petitioner, but not the area originally granted in favour of the petitioner. The area should not change at any time i.e during the lease period or at the time of renewal. The petitioner is well aware that the area held by petitioner firm and the area granted in favour of 3rd respondent are not one and the same and they are separate with a distance of about more than 2 Kms. The petitioner with a malafide intention and to harass the 3rd respondent has stated that their area is falling within the area granted in favour of 3rd respondent. The petitioner got issued a legal notice to the 1st and 2nd respondents, the Director of Mines & Geology, Hyderabad, Dy. Director of Mines & Geology, Kadapa and the Government of A.P. with a request to verify their lease boundaries originally granted and executed. In this connection, it is submitted that soon after receipt of the legal notice through the Directors of Mines & Geology, Hyderabad, a joint Survey was taken up in the presence of the petitioner, Dy. Director of Mines & Geology,

Kadapa, Assistant Director of Mines & Geology, Kadapa, Asst. Director of Survey & Land Records, Deputy Inspector of Survey, R.D.O. Office, Kadapa, Mandal Surveyor, Pendlimarri and Panchayat Secretary, Thummalur.

20. Further it is stated that after conducting the joint survey, it was decided that the area granted in favour of the petitioner is falling on the western side of the Survey No.874 and also outside the mining lease granted in favour of the 3rd respondent i.e. the area held by the petitioner company and the area granted in favour of the 3rd respondent are not overlapping with each other.

21. While replying to the averments in Para 8 of the affidavit filed in support of the writ petition, it is stated that the petitioner was informed well in advance about the joint survey to be conducted on 31.10.2006 and requested to attend for the same in order to know whether the area granted in favour of the petitioner is falling within the area granted in favour of the 3rd respondent. In the presence of the petitioner the boundaries of the leased area was verified physically on the field and found that the petitioner's area and the area granted in favour of 3rd respondent are not overlapping with each other. The action of the 1st and 2nd respondents in executing the lease deed in favour of the 3rd respondent is legal and within the frame work of Rules & Regulations of M.C. Rules and M.R.R & D Act, 1957.

22. In reply to Para 10 of the affidavit filed in support of the writ petition, it is stated that no orders were received either from this court or from the Government with a direction not to execute the lease deed in favour of 3rd respondent till today. If the 3rd respondent submits all the required documents the 2nd respondent have to execute the lease deed in favour of the 3rd

respondent since the area granted in favour of the 3rd respondent and the area previously held by the petitioner company are not same and they are two separate piece of lands in the same survey number. This is the basic stand taken by respondents 1 and 2.

23. In the counter affidavit filed by respondent No.3 in reply to Paras 2 and 3, it is stated that the third respondent was granted a mining lease for Iron Ore in an extent of Ac.367.54 cts in Survey No.874/P, Thummaluru Village, Pendlimarri Mandal, Kadapa District vide G.O.Ms.No.55, Industries and Commerce, (M.III) Department, dated 3-3-2006 by the Government of Andhra Pradesh and all the compliances in pursuance to grant is completed or it is in process for execution of lease deed. The area granted to them is different and distinct from area granted on lease to the writ petitioner. The mining lease granted to writ petitioner company is vide G.O.Ms.No.366, Industries and Commerce (M.III) Department, dated 18-8-1984 is in Survey No.874 of Thummaluru Village, Pendlimarri Mandal, Kadapa District in over an extent of Ac. 17.98 cts as per the averments in the affidavit. Lease was in force up to 22-4-2005 and on enquiry he learnt from the Department that the writ petitioner has not submitted his renewal application as per the Rule 24 of M.C.Rules, and he is not in operation of the area as stated and the writ petitioner has not filed his application as per rules and he is not entitled to carry on the mining operation till the disposal of the renewal application, deeming clause of Rule 24-A will not apply to the case of the petitioner as renewal application is not filed in time. Even otherwise area is not in operation since 1990 onwards.

24. In the reply to Para 4, it is stated that the application is in pursuant to a notification and the area is different and distinct from the writ petitioner,

question of manipulation of records does not arise nor the 2nd respondent is involved in deliberate action, the area on lease to the writ petitioner is different. The petitioner has not been carrying on the mining operations, notices were issued by the Department several times for non working of mine as early as from 1993 under the Mining Regulations and M.C.Rules. The mining lease is liable for termination for non working of mine as early as from 1990. As informed earlier there were several applications for mining leases in the survey number and surveys were conducted by Revenue and Mining Departments to identify and to demarcate areas. The petitioner never represented during the entire process of application in the past several years but is taking objection after coming to know the prospective deposits in the areas granted now. A joint survey was conducted in the presence of writ petitioner by the Deputy Director of Mines and Geology, Kadapa, Assistant Director of Mines and Geology, Kadapa, Assistant Geologist of Mines and Geology, Assistant Director of Survey and Land Records, Deputy Inspector of Survey, RDOs. Office, Kadapa, Mandal Surveyor, Pendlimarri and Panchayat Secretary, Thumaluru and the report of the joint Inspector is that the area on lease to the writ petitioner is on the western side of Survey No.874 and also outside the mining lease granted in their favour. There is no overlapping of the area. The intention of the writ petitioner is that no mining lease should be granted to them. There is no overlapping and the facts are misrepresented by the petitioner for the purpose of interim order. Lease granted to them is legal and within the frame work of Mines and Minerals (Regulations & Development) Act, 1957 and M.C. Rules.

25. In reply to Paras 6,7, 8 and 9, it is stated that the plans filed by the third respondent are the true copies and there are no deliberate

manipulation. In fact, the writ petitioner has misrepresented the facts by swearing to a wrong affidavit and is liable to be punished for perjury. The area is not put to operation since 1995 and the renewal application is filed with a delay and contrary to rules, hence, no mining operations can be done nor it is put to operation as on today. The sketch annexed to the renewal application filed by the writ petitioner also is clear that the area is different and there is no laying, the petitioner is aware of the fact. In spite of full knowledge of these facts, the petitioner suppressed this information and mischievously represented to the Mandal Revenue Officer, Pendlimarri Mandal and the then Assistant Director of Mines and Geology, Kadapa and managed to erroneously prepare sketch showing the area of M/s. Arun Enterprises, Kadapa overlapping in the area of Mr. S.V.Siva Reddy. In order to strengthen their hands, these officials have again written to Assistant Director, Survey and Land Records for obtaining confirmation to a wrong sketch prepared at the instance of the petitioner. The writ petition has to be dismissed on this ground alone.

26. A reply affidavit also was filed on behalf of the petitioner in reply to the counter affidavit made by the third respondent wherein again the stand taken in the affidavit filed in support of the petition had been reiterated narrating certain other factual particulars.

27. No doubt, the third respondent had taken a specific stand that there is alternative remedy by way of revision. The first and second respondents had taken a specific stand that the petitioner is not entitled to carry on the mining operations after the expiry of the lease period and further both the first and second respondents and also the third respondent as well had taken the stand that these are different areas and absolutely there is no

overlapping and hence in any view of the matter, this court is of the considered opinion that the rights of the writ petitioner, if any, cannot be said to be in any way prejudiced and hence the writ petition is devoid of merit and the same shall stand dismissed. No order as to costs.

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P.S.NARAYANA,J

15 -11-2007

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THE HONOURABLE SRI JUSTICE P.S.NARAYANA

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Date: 15 -11-2007